SETTLEMENT DATE: 7/25/00
TIME: NOON

MICHAEL D. HESS
Corporation Counsel of the City of New York
Attorney for the City of New York
Department of Parks and Recreation
100 Church Street, Room 6-133
New York, New York 10007
(212) 788-0843
Gabriela P. Cacuci (GC-4791)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In re:	Chapter 11
RANDALL'S ISLAND FAMILY GOLF CENTERS, INC., et al.,	Case Nos. 00 B 41065 through 00 B 41196 (SMB)
Debtors.	

----------x

OBJECTION OF THE CITY OF NEW YORK DEPARTMENT OF PARKS AND RECREATION TO THE DEBTORS' PROPOSED ORDER PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE EXTENDING TIME WITHIN WHICH THE DEBTORS-IN-POSSESSION MUST ELECT TO ASSUME OR REJECT THEIR UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

The City of New York Department of Parks and Recreation (the "City"), by its counsel, Michael D. Hess, Corporation Counsel of the City of New York, hereby submits its Objection and Counterorder to the Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending Time Within Which the Debtors-in-Possession Must Elect to Assume or Reject Their Unexpired Leases of Nonresidential Real Property (the "Order") filed by the Debtors on July 18, 2000 and noticed for settlement for July 25, 2000 at noon.

THE DREIER-OFFERMAN LICENSE AGREEMENT
IS OUTSIDE THE AMBIT OF THE PROPOSED ORDER

1. On July 5, 2000 the City filed an Objection (the "Objection") to the Debtors' Motion for an Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Debtors' Time to Assume or Reject Certain Unexpired Leases of Non-Residential Property (the "Motion"). At a hearing held on July 10, 2000, this Court granted the Debtors a 90-day extension from the date of the hearing to decide whether to assume or reject the unexpired leases of non-residential property referred to in the Motion.

2. The issue as to WHICH unexpired leases of non-residential property were subject to the Motion and, therefore, covered by the Court's ruling on July 10, was not addressed at the July 10 hearing. The City assumed that the only leases subject to the Motion were the leases listed on Exhibit A to the Motion. As a result, in its Objection, the City referred only to the Alley Pond and the Randall's Island License Agreements with the City, not to the Dreier-Offerman License Agreement (discussed below), which is not listed on Exhibit A.

3. The City did not become aware of the fact that the Debtors were going to use the language "including, without limitation, the leases listed on Exhibit A attached hereto" found at page 2 of their Motion, to affect the substantive rights of unlisted leases. The City became aware of the Debtors' legal position in this respect only after the hearing ended, when the undersigned attempted to discuss with Debtors' counsel the status of the unlisted Dreier-Offerman License Agreement with the City.

4. The City attempted to clarify this issue and to discuss with the Debtors the exclusion of the Dreier-Offerman License Agreement from the proposed Order, as well as the possibility of an amicable resolution of the Dreier-Offerman License Agreement, in light of the

fact that the Debtors apparently have expressed their intent to reject this license. However, despite such efforts, no discussion has taken place.

5. In light of these circumstances, it is respectfully submitted that the Dreier-Offerman License Agreement, which was not listed by the Debtors on Exhibit A to the Motion, should not be included in the Debtors' proposed Order. Since the proposed Order contains the same ambiguous language found in the Motion and referred to above, the City hereby requests (a) that the Order specifically exclude the Dreier-Offerman License Agreement from the Order, and (b) that the Court schedule a separate hearing with respect to the Dreier-Offerman License Agreement.

THE DREIER-OFFERMAN LICENSE AGREEMENT

6. On April 21, 1998, the City, as licensor, entered into a License Agreement (the "License Agreement") with Brooklyn Family Golf Centers, Inc.[1], as licensee, for the construction, operation, management and maintenance of the Dreier-Offerman Park Golf and Recreation Center (the "Recreation Center") located between Coney Island Creek and the Belt Parkway, in the Borough of Brooklyn.[2]

7. The License Agreement is for a term of twenty (20) years beginning "on the day the Licensee opens any portion of the Licensed Premises to the public for business or

[1] Brooklyn Family Golf Centers, Inc. is a wholly owned subsidiary of Family Golf Centers, Inc.

[2] A copy of the License Agreement is being provided to the Court and can be made available to parties in interest upon request.

March 31, 1999, whichever is earlier" defined, in Article III of the License Agreement as the "Commencement Date".

8. Article I of the License Agreement (at page 3) required the Licensee to "obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License".

9. Article V of the License Agreement (at page 13) provided that the "Licensee shall spend or cause to be expended during the Term of this License, a minimum of $4,000,000 for Capital Improvements as defined in Article II [of the License Agreement]…. Licensee shall perform and complete all Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other governmental authorities having jurisdiction."

10. Article V, paragraph 5.2 of the License Agreement (at page 14) also provided for the Licensee's payment to the City of a $40,000 Design Review Fee, representing one percent of the amount of the Capital Improvements. Licensee was to make supplementary payments upon the Final Completion of the Capital Improvements. Id.

11. Under paragraph 5.4 of the License Agreement (at page 14), Licensee was to Finally Complete all Capital Improvements "no later than the dates indicated in Exhibit B" to the License Agreement, unless work could not be completed "due to circumstances beyond the control of Licensee including acts of God, war, … or other similar circumstances which the Commissioner has determined to be beyond the control of Licensee."

12. Exhibit B to the License Agreement described the Phase I and Phase II Capital Improvements that had to be completed by the Licensee, the Licensee's due date for completion of such Capital Improvements, and the expenditures required to be made by the Licensee. According to Exhibit B, Phase I had to be completed by September 30, 1998 and required a minimum capital expenditure of $567,000, and Phase II had to be completed by March 30, 1999 and required a minimum capital expenditure of $3,433,000, for a total expenditure of $4 million during both phases of construction.

13. Phase I included the design and development activities and the relocation of the existing soccer fields. The Licensee had to obtain approval for "all design and schematic plans and drawings for all Capital Improvement activities" including design review by Parks staff and by the City's Municipal Art Commission. Phase II included the construction of a driving range, a clubhouse, a garden style miniature golf course, batting cages, domed in-line skating facility and a picnic/promenade/circular drive and parking lot.

14. The License Agreement at paragraph 5.9 (page 17) provided that "Licensee shall commence Capital Improvements only after the issuance of a construction permit from Parks" and that "Licensee shall notify Commissioner of the specific date on which construction shall begin." Also, under paragraph 5.7 of the License Agreement (at page 16) "[n]o Capital Improvements shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his satisfaction."

15. Paragraph 5.6 of the License Agreement made clear that "Licensee's failure to comply with any phase of the schedules for Capital Improvements for a period of thirty

days following notice shall constitute a default upon which Commissioner may terminate this License by giving ten days notice."

16. Article IV of the License Agreement provided for a minimum annual fee to the City of $800,000, "beginning on the Commencement Date and continuing on or before the first day of each month of each Operating Year in the amounts set forth in the Schedule of Minimum Annual Fee Payments, annexed as Exhibit F" to the License Agreement. In addition, paragraph 4.4 of the same article provided for the payment of a security deposit in the amount of $275,000, as provided in Article VI of the General Provisions. [3]

17. Article I, paragraph 1.2 of the License Agreement also states that "[i]n order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained [therein]. Commissioner may deem as a default Licensee's failure to fulfill such obligations for any reason, upon any applicable notice and any applicable cure period."

18. With respect to termination, Article III, paragraph 3.2 of the License Agreement (at page 8) provides that "[I]n addition to the rights to terminate as provided in Article XXX of the General Provisions …, this License is terminable at will by the Commissioner in his sole and absolute discretion at any time and such termination shall be effective after thirty days written notice to Licensee."

[3] Article XIV of the License Agreement provides that the General Provisions annexed to the agreement as Exhibit A (the "General Provisions") are incorporated in the agreement.

THE DEBTOR'S DEFAULTS UNDER THE LICENSE AGREEMENT

19. Even though, as shown above, the License Agreement required that both Phase I and Phase II be completed by March, 1999, more than a year ago, construction has not even begun at the Dreier-Offerman Park. Upon information and belief, the only activity undertaken to date by the Debtor under the License Agreement is the payment of the Design Review Fee of $40,000 in May, 1998 and the presentation of its designs and plans for the Recreation Center to the City Art Commission, which approved such designs and plans on May 8, 2000.[4]

20. By letter dated May 16, 2000, the City advised the Debtor that in order to commence prompt construction under Phase II of the License Agreement, the Debtor had to file all necessary applications with the Buildings Department by June 16, 2000, respond to any comments from the Buildings Department by July 16, 2000, and obtain work permits by August 16, 2000. In the same letter, the City advised the Debtor that failure to obtain work permits by August 16, 2000 may result in the termination of the License Agreement.

21. I have been advised by the City that a meeting took place on June 7, 2000 between the Debtor and the City at which time the Debtor advised the City that it did not intend to proceed with the construction of the Dreier-Offerman Recreation Park. I have also been advised that the Debtor subsequently failed to file its applications with the Buildings Department by June 16, 2000.

[4] Upon information and belief, the Dreier-Offerman Recreation Center has also been substantially delayed by litigation unrelated to the Debtor's financial difficulties.

23. Thus, the Debtor is in default of its obligations under the License Agreement and the Commissioner is entitled to terminate the License Agreement. Considering the Debtor's defaults under the License Agreement, the Debtor's expressed intent to the City not to proceed with the construction of the project and the substantial delays and difficulties already encountered by the City regarding the development of this Recreation Park, this License Agreement – which was not identified in Exhibit A to the Motion – should not be covered by the Debtors' proposed Order.

24. Indeed, at the July 10, 2000 hearing on the Debtors' Motion, the Court treated those leases which had been allegedly terminated by the landlords differently than the remaining leases covered by the Motion. It is respectfully submitted that, even though the Commissioner has not yet formally terminated the License Agreement, he was certainly was entitled to do so under the License Agreement and, as indicated above, may terminate the License Agreement shortly.

25. In sum, the Debtors' proposed Order should specifically exclude the License Agreement from its ambit because (i) this License Agreement was not listed on Exhibit A to the Debtors' Motion, (ii) the Commissioner has already advised the Debtor that it intends to terminate the License Agreement in mid-August, 2000 as a result of the Debtor's continuing defaults, and (iii) the Debtor advised the City that it did not intend to proceed with the construction of the Facility. The City respectfully requests that the Court also treat this Objection as the City's written notice of termination of the License Agreement and as the City's Motion to Compel the Debtors to Reject the License Agreement and to schedule a hearing with respect thereof.

WHEREFORE, for all of the foregoing reasons, the City respectfully requests that the Court sign the City's Counterorder, which specifically excludes the License Agreement from the ambit of the Order and schedule a separate hearing with respect to the City's Motion to Compel the Debtors to Reject the License Agreement.

Dated: New York, New York
July 21, 2000

MICHAEL D. HESS
Corporation Counsel of the City of New York
Attorney for the City of New York
Department of Parks and Recreation
100 Church Street, Room 6-133
New York, New York 10007
(212) 788-0843

By: /s/ Gabriela P. Cacuci

Gabriela P. Cacuci (GC 4791)
Assistant Corporation Counsel

CERTIFICATION OF SERVICE

I, Gabriela P. Cacuci, an attorney admitted to practice before the courts of the State of New York, do hereby certify that on July 20, 2000, I caused true copies of the Objection of the City of New York Department of Parks and Recreation to the Debtors' Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Debtors' Time to Assume or Reject Certain Unexpired Leases of Non-Residential Property, to be delivered by hand delivery upon the following parties:

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
One New York Plaza
New York, New York 10004
Attn: Gerald C. Bender, Esq.

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street, 21st Floor
New York, New York 10004
Attn: Brian Shoichi Masumoto, Esq.

BERLACK, ISRAELS & LIBERMAN LLP
120 West 45th Street
New York, New York 10036
Attn: Edward S. Weisfelner, Esq.

MORGAN, LEWIS & BOCKIUS
101 Park Avenue, 40th Floor
New York, New York 10178
Attn: Patricia F. Brennan, Esq.

Dated: New York, New York
July 21, 2000

/s/ Gabriela P. Cacuci
GABRIELA P. CACUCI (GC-4791)